IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 93 of 1998

1. Bapu Ishwara Patil
2. Dnyanu Ishwara Patil
both residing at Savate
Post, Shimpe, Taluka
Shahuwadi, Dist.Kolhapur ..Petitioners

vs.

1. Special Land Acquisition
Officer No.12, Juna Rajwada
Kolhapur.

2. The Collector and Deputy
Director of Resettlement (Lands)
Kolhapur

3. The Deputy Director of
Resettlement, Revenue &
Forests Department,
Mantralaya, Mumbai.

4. Additional Commissioner
Pune Divisison, Pune

5. District Resettlement Officer
Kolhapur

6. State of Maharashtra ..Respondents

Shri Sandeep Ghogare with Shri Pradip D.Dalvi for petitioners.
Shri Y.D.Mulani, A.G.P. for respondent nos. 1 to 6.

CORAM: A.P.SHAH
S.U.KAMDAR JJ.
13th Setember, 2004

ORAL JUDGMENT (Per A.P.Shah J.)

1. By this petition, the petitioners are seeking to challenge the acquisition of the petitioners' land bearing Gat No.731 admeasuring 0.40 Ares situated at village Savate, Taluka Shahuwadi,

District Kolhapur under the Land Acquisition Act, 1894. In the affidavit in reply filed on behalf of respondent nos. 1 to 6 it has been pointed out that the Notification under sec.4 of the Land Acquisition Act was published on 14th December, 1995, declaration under section 6 has been published on 29th November, 1996, Award under sec.11 was declared on 21st September, 1997 and possession of the land has been obtained on 30th December, 1997.

2. The petitioners have filed the affidavit in rejoinder. The petitioners have not disputed the aforesaid submissions appearing in the affidavit in reply. The petitioners, however, rely upon the permission granted by the District Collector and Deputy Director for Resettlement dated 1st January, 1987 granting permission for sub-division of their holdings which is much prior to the Notification issued under sec.11 of the Act on 27th January, 1981. By placing reliance on sec.12 of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 it is contended that having regard to the permission the holding of the petitioners is below the ceiling of 8 Acres and hence no part of their land is liable to be acquired.

3. On behalf of the respondents, M.T.Palake, Tahsildar No.2 (Resettlement), Kolhapur has filed the additional counter affidavit dealing with the permission dated 1st January, 1987. It is stated that the application dated 21st December, 1986 preferred by the petitioners to the Office of the Collector and Deputy Director of Resettlement is not found in the record. However, a carbon copy of the aforesaid application dated 1st January, 1987 is traced from the office record. From the said copy it can be seen that permission dated 1st January, 1987 along with its a carbon copy/office copy was placed by the concerned Awal Karkun before the Collector and Deputy Director of Resettlement, Kolhapur with an endorsement in the margin of the carbon copy that the village Savate does not fall under the benefited zone of any project. It is stated that relying upon the said endorsement permission dated 1st January, 1987 was signed by the concerned officer.

4. Having heard the learned Counsel for the parties we were satisfied that the Awal Karkun misled the Collector and obtained his signature by misrepresentation. It is obvious that this permission was procured at the behest of the petitioners. The Collector was completely misled in believing that the village Savate does not fall

in the benefited zone. Under the circumstances, it is not open for the petitioner to rely upon the said permission for the purpose of computation of his holdings and the court will have to proceed on the basis that the holding of the petitioners was more than 8 Acres. In any event, the award is already passed and possession of land is also obtained. Therefore, there is no infirmity in the acquisition proceedings and the award cannot be interferred with. Petition is accordingly dismissed with costs.

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Date of Judgment: 13th September, 2004

For approval and signature of:

The Hon'ble Mr.A.P.SHAH J.

The Hon'ble Mr.S.U.KAMDAR J.

1. Whether the Reporters of the local papers may be allowed to see the judgment/order?

2. Whether to be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad and Goa offices?